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Letter Ruling 00-5: Partnership Status of Brazilian Limited Liability Quota Co.

March 20, 2000

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You request a letter ruling on behalf of ***** ("Investment Subsidiary"), ***** ("Holding Subsidiary"), and ***** ("LTDA").

STATEMENT OF FACTS

Investment Subsidiary and Holding Subsidiary are Delaware investment corporations wholly owned by ***** ("Parent"), a Massachusetts corporation. LTDA is limited liability quota company formed under the laws of Brazil.[\[1\]](#) LTDA is owned by Investment Subsidiary and Holding Subsidiary.

During 1999 LTDA elected under the so-called "check-the-box" Treasury Regulations to be treated as a partnership for United States federal income tax purposes. See Treas. Reg. § 301.7701.

RULINGS REQUESTED

You request the following rulings:

1. LTDA will be treated as a partnership under G. L. cc. 62, section 17, if it is treated as a partnership for federal income tax purposes under Treas. Reg. § 301.7701 (the "check-the-box" regulation).
2. In apportioning the income of Investment Subsidiary and Holding Subsidiary for Massachusetts excise tax purposes, the property, payroll and sales apportionment factors of LTDA will flow through to, and be reported by, Investment Subsidiary and Holding Subsidiary in accordance with 830 CMR 63.38.1(13)(d). Investment Subsidiary and Holding Subsidiary will each take into account in apportioning its income and net worth its percentage interest of LTDA's property, payroll and sales. 830 CMR 63.38.1(13)(d)l, (d)2, (d)3, and (f).

DISCUSSION

Ruling 1: Treatment of LTDA as a Partnership

As stated in TIR 97 8, G.L. c. 62, § 17 requires a foreign limited liability company to be treated as a partnership for Massachusetts tax purposes if it is classified as a partnership for federal income tax purposes. Section 17 provides in part:

A limited liability company formed under chapter one hundred and fifty six C or a foreign limited liability company as defined in section two of chapter one hundred and fifty six C shall be deemed to be a partnership if it is classified for the taxable year as a partnership for federal income tax purposes.

The Massachusetts Limited Liability Company Act defines a foreign limited liability company as "a limited liability company formed under the laws of any state other than the Commonwealth or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction." G.L. c. 156C, § 2(4).

The taxpayers have represented that LTDA is a limited liability company under Brazilian law and is denominated as such thereunder.^[2] Since LTDA is a non-Massachusetts limited liability company, G.L. c. 62, § 17 and TIR 97 8 require that the federal treatment of the LTDA be followed for Massachusetts tax purposes. Accordingly, if LTDA is treated as a partnership for federal income tax purposes under Treas. Reg. § 301.7701, then LTDA will be treated as a partnership for purposes of G. L. c. 62, § 17.

Ruling 2: Applicability of Flow-Through Provisions of G. L. c. 62, § 17 and Flow-through of Apportionment Factors under 830 CMR 63.38.1(13)(d)

Since under Ruling 1, LTDA will be treated as a partnership, it will not itself be subject to income taxation in Massachusetts; instead, its partners (i.e., Investment Subsidiary and Holding Subsidiary) will each include in its taxable income its respective distributive share of the income, loss, and other partnership items of LTDA. G.L. c. 62, § 17; 830 CMR 63.38.1(13)(c). See, *generally*, LR 99-13, Ruling 2.

In apportioning Investment Subsidiary's and Holding Subsidiary's income and net worth, LTDA's property, payroll and sales apportionment factors will flow through to, and be reported by, Investment Subsidiary and Holding Subsidiary, in accordance with 830 CMR 63.38.1(13)(d). Thus, Investment Subsidiary and Holding Subsidiary will each take into account in apportioning its respective income its percentage interest of LTDA's property, payroll, and sales. 830 CMR 63.38.1(13)(d)1, (d)2, (d)3, and (f). See, *generally*, LR 99-13, Ruling 3.

Very truly yours,

/s/Frederick A. Laskey

Frederick A. Laskey
Commissioner of Revenue

FAL:DMS:atf

LR 00-5

^[1] A limited liability quota company is formally called a *sociedade civil por quotas de responsabilidade limitada*. See Article 1 of Decree No. 3.708 of 10 January 1919. An entity organized as a corporation in Brazil is formally called a *sociedade anônima*.

^[2] See Article 2 of Decree No. 3.708 of 10 January 1919 which states that a limited liability quota company "shall stipulate that the liability of the quotaholders is limited to the total amount of the quota capital."

